

59-14-211 Penalties for dealing with prohibited cigarettes -- Private right of action.

- (1) A person, regardless of whether the person is a licensee under Section 59-14-202, is guilty of a class B misdemeanor for each instance in which the person knowingly or with reason to know:
 - (a) sells or distributes cigarettes described under Section 59-14-210;
 - (b) acquires, holds, owns, possesses, transports, imports, or causes to be imported cigarettes:
 - (i) described under Section 59-14-210; and
 - (ii) intended for distribution or sale in the state;
 - (c) alters the package of any cigarettes prior to their sale or distribution to the ultimate consumer to remove, conceal, or obscure a notice, warning label, or other package information described in Subsection 59-14-210(1)(a); or
 - (d) affixes a stamp used to pay the tax imposed under Section 59-14-204, Part 3, Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of cigarettes:
 - (i) described under Section 59-14-210;
 - (ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c); or
 - (iii) in violation of Section 59-14-604.
- (2) If a person knowingly or with reason to know commits an act described in Subsections (1)(a) through (d), the commission shall:
 - (a) suspend or revoke a license issued to the person under Section 59-14-202; and
 - (b) regardless of whether the person is licensed under Section 59-14-202, impose a civil penalty in an amount not to exceed the greater of:
 - (i) 500% of the retail value of the cigarettes; or
 - (ii) \$5,000.
- (3) Any person whose commercial interests have been adversely affected as a result of a violation of this section may bring an action for injunctive relief, damages, or both.
- (4)
 - (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or retailer is punishable by a court of law as follows:
 - (i) a first violation involving a total quantity of less than 100 cartons of cigarettes is punishable by a fine in an amount the greater of \$500 or five times the retail value of the cigarettes;
 - (ii) a subsequent violation involving a total quantity of less than 100 cartons of cigarettes is punishable by:
 - (A) the greater of a fine of \$2,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed one year; or
 - (C) both imprisonment and a fine imposed by this Subsection (4)(a)(ii); and
 - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to two years;
 - (iii) a first violation involving a total quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$2,500 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iii);
 - (iv) a second violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$10,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iv); and

- (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
- (v) a third and subsequent violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$25,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(v); and
 - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
- (b) any counterfeit cigarette seized by the commission shall be destroyed.

Amended by Chapter 204, 2005 General Session